HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 1382 OF 2004

DATED: 28.12.2006

Between:

M/s Marvel Weavers Limited

… Petitioner

and

The A.P. State Financial Corporation
Limited (APSFC), represented by its
Chairman and Managing Director,
Chirag Ali Lane, Abids, Hyderabad and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.1382 OF 2004

ORAL ORDER:

The writ petition is filed seeking a relief of a direction to respondents " to extend/implement the benefits under Resolution No.28/1/99 – 99 Dt. 31.3.1999 resolved, TUFS Scheme, by the Ministry of Textiles along with subsequent circulars/notifications issued under TUFS and Notification No.1 (44)/2003-IFI dt. 24/9/2003 issued by Ministry of Finance, to the petitioner industry" and for a direction to the respondents " to release the factory from the seizure, consequently declare the action of the respondents in seizing the unit and auction notice dt. 18.1.2004 as null, void, arbitrary, inoperative in law, ultra vires, bad and violative of Articles 14, 21 and 300-A of the Constitution of India and violative of principles of natural justice and pass such other order or orders as the Hon'ble Court deems fit and necessary in the nature and circumstances of the case."

The petitioner is a company incorporated under the provisions of the Companies Act, 1956. It availed loans from respondents 1 and 2

for its commercial purposes. It defaulted in the repayment of the loan instalments; as per the terms agreed upon for the purpose. The petitioner, of course, puts forth several reasons why it could not deliver upon the contractual obligation to repay. Adverse industrial climate, inadequate exports and the like are the reasons projected by the petitioner-company for its default in the payment of loans to respondents 1 and 2. Exercising power under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act'), the respondents 1 and 2 seized the petitioner's unit on 22.9.2003 and also issued a paper notification, notifying bids for sale of the assets. Such a notification was issued on 18.1.2004.

According to the petitioner, the schemes generated by the Union Ministries of Textiles and Finance known as "Technology Upgradation Fund Scheme (TUFS) entitles the petitioner to certain benefits in terms of the rate of interest payable to the respondents 1 and 2 under the loan obtained by the petitioner from these respondents. The petitioner states (in para 11) that the Central Government in order to develop the exports and increase foreign currency income of the nation, framed schemes to rehabilitate the textile industries and issued schemes and norms. The Ministry of Textiles by a resolution dated 31.3.1999 announced TUFS.

The petitioner submitted several representations to the respondents 1 and 2 claiming benefits under the TUFS. There was no response from the respondents. According to the petitioner, if it were treated as entitled to and granted the benefits under the TUFS, then its

liability would come down sufficiently and the amounts paid by it towards instalments earlier would be well within the instalments payable. The petitioner also has a grievance that the State of Andhra Pradesh which had sanctioned investment subsidy of Rs.20 lakhs and sales tax deferment of Rs.2.70 crores to the petitioner, did not release the amounts. According to the petitioner, these defaults by the State further accentuated the petitioner's precarious financial position and rendered the petitioner a defaulter to the respondents 1 and 2.

The 1st respondent has filed a counter affidavit. This counter asserts that the petitioner failed to repay the loans as agreed upon and committed several defaults and is due and payable an amount of Rs.1,64,67,437/- including the principal, interest and expenses. The petitioner's allegation that the assets of the company were seized without following the procedure under Section 29 of the Act, is clearly and categorically denied. This respondent controverts the petitioner's claim that the petitioner is entitled to the benefits under the schemes. It is contended that the petitioner is ineligible for the benefits envisaged under the TUFS. It is further stated that as the loans were sanctioned and disbursed by the respondents 1 and 2 in 1998 and the petitioner availed loans w.e.f 5.2.1999, long prior to the introduction of the TUFS, the respondents are not obligated to consider the petitioner's case under the TUFS. In short, the 1st respondent contends that the petitioner is not eligible to claim the benefits under the TUFS. The 1st respondent also contends that it is no way concerned with any defaults

committed by the Government with regard to the promises made by the State to the petitioner-industry in respect of investment subsidy or sales tax deferment. The petitioner, according to this respondent, is bound to pay up the loans obtained in accordance with the terms of the agreement between the parties and cannot plead extraneous circumstances including default by the State, to avoid its liability to the respondents 1 and 2.

On behalf of the 2nd respondent, a counter affidavit is filed. This counter also categorically asserts that the petitioner has defaulted. The 2nd respondent has also controverted the petitioner's allegation that the seizure of the assets, exercising power under Section 29 of the Act, was illegal or arbitrary. According to this respondent, the petitioner is due and liable as on 29.2.2004, Rs.3,06,59,000/-.

The petitioner has not placed before this court any material to permit the conclusion that the propounded schemes of the Government of India providing any concessions to the petitioner are binding on the respondents 1 and 2. Under what law the schemes were propounded by the Union; how those schemes obligate the respondents 1 and 2 who are statutory financial institutions, to restructure their interest rates in accordance with the policy underlying the schemes and which law obligates the respondents 1 and 2 to recover the amounts and at rates otherwise than on the terms agreed between the parties, is not stated by the learned counsel for the petitioner nor is it pleaded by the petitioner in the writ petition. Merely because the Government

propounds schemes as a part of its administrative policy, in the absence of any legal architecture obligating compliance with such administrative policies of the State, no individual or institution is bound by such a policy. There has to be legal nexus between administrative policy and the obligation of a citizen or an institution to conform or conduct its affairs in accordance with such policy. In the absence of such legal architecture, pure executive policy remains a brutum fulmen, inexecutable in law.

The respondents 1 and 2 are not a party to the schemes framed by the Ministries of Textiles and Finance, Union of India. There is no obligation disclosed under which the respondents 1 and 2 are bound to comply with the terms of those schemes or to extend benefits to the petitioner under the schemes, deviating from their own internal policy and the terms of the agreement between the respondents 1 and 2 and the petitioner, with regard to the repayment of the loan instalments and to avoid the consequences following upon default.

For the aforesaid reasons and on the analysis above, the relief sought by the petitioner cannot be granted. There are no merits. The writ petition is accordingly dismissed. No costs.

GODA RAGHURAM, J

Date: 28.12.2006
CVM